IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2416 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SOHILBHAI JINNATALI THAKKAR

Versus

NISARALI BARKATALI SUNDARANI

Appearance:

1. First Appeal No. 2416 of 2002

MR DC SEJPAL for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

MS MEGHA JANI for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.H.KADRI

Date of decision: 26/04/2004

ORAL JUDGEMENT

1. The appellant (original claimant), by filing this

appeal under Section 173 of the Motor Vehicles Act, 1988 ('Act' for short), has challenged the judgment and order dated August 30, 2002, passed by the Motor Accident Claims Tribunal (Aux.), Bhavnagar, rejecting application Exh.5 filed by the claimant under Section 140 of the Act in MACP No.168 of 2001. The said application was rejected by the Tribunal on the ground that it was doubtful whether injuries which the claimant had suffered had resulted into permanent disability.

2. Having heard the learned advocates for the parties, and having gone through the xerox copies of the documents produced along with the application Exh.5, in my view, the Tribunal has committed an error in rejecting the application Exh.5 filed by the claimant under Section 140 of the Act. Therefore, the application Exh.5 filed by the claimant in MACP No. 168 of 2001 deserves to be allowed. The respondent No.2-United India Insurance Company is directed to deposit with the Tribunal the amount of Rs.25,000/- under 'no fault liability' along with interest at the rate of 9% from the date of the application till the date of deposit and costs of the application within eight weeks from today.

3. The original claimant shall, however, file an undertaking before the Tribunal within four weeks from today to the effect that the main claim petition shall not be abandoned, shall not be withdrawn, and shall not be permitted to be dismissed for default or for any other cause, and that the claimants shall obtain a decision on merits in the said claim petition. The amount awarded under the impugned order shall be adjusted against the final award in the main claim petition.

4. On the said undertaking being filed, 40% of the amount awarded shall be permitted to be withdrawn by the claimant on furnishing security to the satisfaction of the Tribunal. The remaining 60% of the amount shall be invested in a Cumulative Fixed Deposit in any nationalized Bank in the name of the Registrar of the Tribunal for a period of five years. The deposit shall be renewed from time to time till the main petition is disposed of.

5. Subject to the observations and directions hereinabove, the appeal is allowed, and the application Exh.5 filed by the claimant in MACP No.168 of 2001 is also allowed. There shall be no order as to costs. D.S. is permitted.

(M.H. Kadri, J.)

(swamy)